Office-Supreme Court, U.S.
FILED
AUG 19 1983
ALEXANDER L. STEVAS,
CLERK

Nos. 82-206 and 82-229

In the Supreme Court of the United States

October Term, 1983

FIREFIGHTERS LOCAL UNION NO. 1784,
Petitioner,

vs.

CARL W. STOTTS, et al.,
Respondents.

and

MEMPHIS FIRE DEPARTMENT, et al.,
Petitioners,

vs.

CARL W. STOTTS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF PETITIONERS, MEMPHIS FIRE DEPARTMENT, et al.

CLIFFORD D. PIERCE, JR.*
City Attorney
125 North Mid-America Mall
Memphis, Tennessee 38103
(901) 528-2614

LOUIS P. BRITT III
Staff Attorney
67 Madison Avenue, 12th Floor
Memphis, Tennessee 38103
(901) 521-1111

Attorneys for Petitioners, Memphis Fire Department, et al.

*Counsel of Record

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTION PRESENTED

Did the trial court have the authority to modify a consent decree between a municipal employer and a class of black employees by enjoining the application of a layoff policy that is based upon a bona fide seniority system and by requiring layoffs to be based upon racial considerations, where the consent decree is silent with respect to the method to be used for layoffs and where there has been no judicial finding of racial discrimination?

TABLE OF CONTENTS

QUESTION PRESENTED I
TABLE OF AUTHORITIES IV
OPINIONS BELOW 1
JURISDICTION 2
STATUTORY PROVISIONS INVOLVED 2
STATEMENT OF THE CASE 3
SUMMARY OF ARGUMENT 10
ARGUMENT 13

I. The District Court Erred in Modifying the 1980 Consent Decree to Preclude a Reduction in Force Pursuant to a Bona Fide Seniority System Where That Decree Did Not Preclude Seniority-Based Layoffs 13

A. The Consent Decree Does Not Impose an Obligation on the City to Deviate From Its Bona Fide Seniority System 13

B. The Court's Reliance on Changed Circumstances to Support Modification of the Consent Decree Is Misplaced 18

II. The Court Erroneously Enjoined the Use of a Bona Fide Seniority System Without a Finding of Unlawful Discrimination Against the City 21

A. The Abrogation of the Bona Fide Seniority System Exceeded the Court's Remedial Authority Under §§703(h) and 706(g) of Title VII 23

B. The Court's Modification of the Seniority System Constitutes a Judicially-Mandated Preference Based on Race in Direct Violation of §703(j) 30

III. The Decision Below Will Have a Chilling Effect on the Use of Voluntary Consent Decrees 34

IV. The Decision Below Constitutes an Improper Judicial Intrusion Into Local Governmental Affairs 36

CONCLUSION 38
ADDENDUM A A1
ADDENDUM B A4

TABLE OF AUTHORITIES

Cases

Airline Stewards and Stewardesses v. American Airlines, 573 F.2d 960 (7th Cir.), *cert. denied*, 439 U.S. 876 (1978) 19, 22

Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975) 24, 26

Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) 34

American Tobacco Co. v. Patterson, 456 U.S. 63 (1982) 25, 26, 27

Brown v. Neeb, 644 F.2d 551 (6th Cir. 1981) 16, 17, 18

Caminetti v. United States, 242 U.S. 470 (1917) 30

Chance v. Board of Examiners, 534 F.2d 993 (2d Cir. 1976), *cert. denied*, 431 U.S. 965, *reh'g denied*, 434 U.S. 881 (1977) 33, 34

Chrysler Corporation v. United States, 316 U.S. 556 (1942) 21

Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977) 36

EEOC v. McCall Printing Corp., 633 F.2d 1232 (6th Cir. 1980) 19

EEOC v. Safeway Stores, 611 F.2d 795 (10th Cir. 1979), *cert. denied*, 446 U.S. 952 (1980) 19
Ford Motor Co. v. EEOC, 102 S.Ct. 3057 (1982) 24, 26
Fox v. United States Department of Housing, 680 F.2d 315 (3rd Cir. 1982) 20, 21, 23, 35
Franks v. Bowman Transportation Co., 424 U.S. 747 (1976) 22, 26, 28
General Bldg. Contractors Ass'n v. Pennsylvania, 102 S.Ct. 3141 (1982) 24
Griggs v. Duke Power Co., 401 U.S. 424 (1971) 31
Guardians Ass'n v. Civil Service Commission of New York, 51 U.S.L.W. 5105 (U.S. July 1, 1983) 28
Gurmankin v. Costanzo, 556 F.2d 184 (3rd Cir. 1977), *cert. denied*, 450 U.S. 923 (1981) 24
Hills v. Gautreaux, 425 U.S. 284 (1976) 23
Hughes v. United States, 342 U.S. 353 (1952) 10, 14, 15, 16
Humphrey v. Moore, 375 U.S. 335 (1964) 26
International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977) .....passim
Jersey Central Power & Light Co. v. Local Union 327, I.B.E.W., 508 F.2d 687 (3rd Cir. 1975), *cert. denied*, 425 U.S. 998 (1976) 17, 18
Milliken v. Bradley, 418 U.S. 717 (1974) 36, 37
Milliken v. Bradley, 433 U.S. 267 (1977) 36
Oliver v. Kalamazoo Board of Education, 706 F.2d 757 (6th Cir. 1983) 16, 27
Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976) 38
Pullman-Standard v. Swint, 456 U.S. 273 (1982) 27
Regents of University of California v. Bakke, 438 U.S. 265 (1978) 31
Stotts v. Memphis Fire Department, 679 F.2d 541 (6th Cir. 1982) .....passim

Stotts v. Memphis Fire Department, 679 F.2d 579 (6th Cir.), *cert. denied sub nom., Orders v. Stotts*, 103 S.Ct. 297 (1982) 4
Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) 36
System Federation No. 91 v. Wright, 364 U.S. 642 (1961) 23
Trans World Airlines v. Hardison, 432 U.S. 63 (1977) 26
United Air Lines v. Evans, 431 U.S. 553 (1977) 28, 29
United States v. American Trucking Ass'ns, 310 U.S. 534 (1940) 31
United States v. Armour & Co., 402 U.S. 673 (1971) 14, 18, 23
United States v. Atlantic Refining Co., 360 U.S. 19 (1959) 14
United States v. ITT Continental Baking Co., 420 U.S. 223 (1975) 15, 36
United States v. Swift & Co., 286 U.S. 106 (1932) 18, 19, 21
United Steelworkers of America v. Weber, 443 U.S. 193 (1979) 31-32
Washington v. Davis, 426 U.S. 229 (1976) 24
Waters v. Wisconsin Steel Works of International Harvester Co., 502 F.2d 1309 (7th Cir. 1974), *cert. denied*, 425 U.S. 997 (1976) 33
Watkins v. United Steel Workers Local No. 2369, 516 F.2d 41 (5th Cir. 1975) 33
Youngblood v. Dalzell, 568 F.2d 506 (6th Cir. 1978) 17, 18
Zipes v. Trans World Airlines, 455 U.S. 385, *reh'g denied*, 102 S.Ct. 2001 (1982) 26, 28, 29

Statutes

42 U.S.C. §1981 ..... 2, 3, 24, 30
42 U.S.C. §1983 ..... 2,3, 24, 30
Title VII, Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.* 2
Title VII, §703(h), 42 U.S.C. §2000e-2(h) 2, 27, 28, 29
Title VII, §703(j), 42 U.S.C. §2000e-2(j) ..... *passim*
Title VII, §706(g), 42 U.S.C. §2000e-5(g) 2, 11, 23, 24, 25

Articles

Hamburger, *Alternatives to Seniority-Based Layoffs: Reconciling* Teamsters, Weber *and the Goal of Equal Employment Opportunity,* 15 U. Mich. J. L. Ref. 523, (1982) 16
Summers and Love, *Work Sharing As an Alternative to Layoffs by Seniority: Title VII Remedies in Recession,* 124 U. of Pa. L. Rev. 893 (1976) 27

Legislative Sources

110 Cong. Rec. 1518 (1964) 32
110 Cong. Rec. 1600 (1964) 32
110 Cong. Rec. 6549 (1964) 25
110 Cong. Rec. 7214 (1964) 25
110 Cong. Rec. 11848 (1964) 32
110 Cong. Rec. 14314 (1964) 32
Section-by-Section Analysis, 118 Cong. Rec. 7168 (1972) 25

Miscellaneous

Tennessee Department of Employment Security, Tennessee Data for Affirmative Action Plans, 6th Edition (1980) 7

Nos. 82-206 and 82-229
In the Supreme Court of the United States

October Term, 1983

FIREFIGHTERS LOCAL UNION NO. 1784,
Petitioner,

vs.

CARL W. STOTTS, et al.,
Respondents,

and

MEMPHIS FIRE DEPARTMENT, et al.,
Petitioners,

vs.

CARL W. STOTTS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF PETITIONERS, MEMPHIS FIRE DEPARTMENT, et al.

OPINIONS BELOW

The question presented derives from two orders entered by the United States District Court for the Western District of Tennessee, and the judgment of the United States Court of Appeals for the Sixth Circuit affirming those orders. The opinion of the Sixth Circuit below appears at 679 F.2d 541 and is reprinted in the appendix to

the petition for writ of certiorari filed by the municipal petitioners (City Pet. A1-71).[1] The orders of the district court (unpublished) are printed in the appendix to the petition for writ of certiorari (City Pet. A77-79, Order Granting Preliminary Injunction entered May 18, 1981; and A82-83, Order Expanding Preliminary Injunction entered June 26, 1981).[2] The oral ruling of the district court is printed at City Pet. A72-76.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1). The judgment of the court of appeals was entered on May 7, 1982. The petition for writ of certiorari was timely filed on August 4, 1982, and was granted on June 6, 1983.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are relevant portions of Title VII of the Civil Rights Act of 1964, as amended (hereinafter referred to as "Title VII"), 42 U.S.C. §2000e *et seq.*, specifically §§703(h), 703(j) and 706(g) thereof (42 U.S.C. §§2000e-2(h), 2(j) and 5(g)); the Civil Rights Act of 1866, 42 U.S.C. §1981; and the Civil Rights Act of 1871, 42 U.S.C. §1983. Sections 703(h) and (j), 706(g), and 42 U.S.C. §§1981 and 1983 are reproduced in Addendum A, hereto.

---

1. The appendix to the petition for writ of certiorari filed by the municipal petitioners will be designated by the signal: "(City Pet. A)." The joint appendix submitted in this matter will be designated "(J.A.)."

2. An order was entered by the district court on June 23, 1981, enjoining the seniority-based reduction in personnel in three classifications (City Pet. A80-81). That injunctive relief was reiterated in the June 26 order, along with the court's approval of the modified seniority plan.

STATEMENT OF THE CASE

The instant controversy arose out of a 1980 consent decree entered into between the City of Memphis (hereinafter "City") and its black firefighters in settlement of a race discrimination lawsuit.

In 1977, a black Memphis fireman filed a class action alleging that the Memphis Fire Department had maintained racially discriminatory hiring and promotional practices in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §§1981 and 1983. In 1979, another black employee of the Memphis Fire Department filed a separate action alleging that he had been denied a promotion in the Department's Fire Prevention Bureau in violation of Title VII and 42 U.S.C. §1983. The cases were consolidated by the district court and settled less than a year later, before trial, when the district court approved a consent decree. The district court made no finding of discrimination by the City, and the decree contained no admission of discrimination. In fact, the decree provides:

> Defendants, by entering into this Consent Decree, do not thereby admit any violations of law, rule or regulation with respect to the allegations made by plaintiffs in their complaints (City Pet. A60).

The decree (hereinafter "1980 Decree") provided for promotions of 13 named individuals and payment of $60,000 in back pay to 81 Fire Department employees. Retroactive seniority was not given to any member of the class, which was defined as "all incumbent black employees of the Memphis Fire Department, all those black employees who will be employed there in the future, and all black persons who have been denied employment with the Memphis Fire Department since March 24, 1972." Notice of the settlement was mailed to each identified class member and

was posted in all engine houses of the Fire Department. Class members were given 15 days in which to file objections to the terms of the decree (City Pet. A69). No objections were filed by any class member.[3]

The 1980 Decree set forth a general, long-term minority hiring goal which paralleled an earlier hiring goal agreed to by the City in a consent decree entered into in 1974 in a case brought by the United States (hereinafter "1974 Decree").[4] The long-term goal established in both decrees obligated the City to increase the level of black representation in each job classification of the Memphis Fire Department to approximate the black representation in the labor force in Shelby County, Tennessee. An interim hiring ratio of 50% black personnel was included in both decrees as a means of achieving the long-term goal more quickly.[5] The 1980 Decree also included a 20% black promotional goal in each civil service classification within the Fire Department.[6] By the terms of the 1980 Decree, the minority class members agreed that they would "seek no further relief for the acts, practices or omissions alleged in the complaints save to enforce the provisions of this Decree, thereby waiving the right to seek further relief" (City Pet. A61).

---

3. Several non-minority employees, however, unsuccessfully sought to intervene. *Stotts v. Memphis Fire Department*, 679 F.2d 579 (6th Cir.), *cert. denied sub nom., Orders v. Stotts*, 103 S.Ct. 297 (1982).

4. The 1980 Decree is set forth as an appendix to the opinion of the Court of Appeals, City Pet. A59-69; the 1974 Decree is set forth in its entirety at J.A. 98.

5. The 1974 Decree provided, however, "[a]ll of said goals are subject to the anticipated budgeted vacancies in the City" (J.A. 105, ¶10).

6. The inclusion of the promotional goal in the 1980 Decree was the only substantive addition to the affirmative action goals of the 1974 Decree. The hiring goal and the long-term goal remained unchanged. By its own terms, the 1980 Decree was "not intended to conflict with any provisions of the [1974] Decree;" rather, it was "intended to parallel and supplement the relief provided in that Consent Decree" (City Pet. A60).

Like the 1980 Decree, the 1974 Decree was entered into by the City and approved by the court prior to trial on the merits. The 1974 Decree specifically provided that the entry of the decree did not constitute an adjudication or admission of discrimination by the City.[7] The parties to both decrees waived all hearings, findings of fact and conclusions of law on all issues raised by the complaints. Neither decree included provisions concerning layoffs or reductions in rank, although the 1974 Decree did obligate the City to utilize a seniority system based upon City-wide seniority for various employment practices, including promotions, transfers and job assignments (J.A. 103, ¶6(a)). The 1974 Decree further provided that "[i]n no event shall the City be required to hire unnecessary personnel" (J.A. 101, ¶3), and that "[n]o specific numerical ratio for employment . . . of black firefighters shall be established unless the city fails in its good faith attempt to meet the interim goals [of increasing minority employment] . . ." (J.A. 105-06, ¶10).

In early May, 1981, the City announced that due to a substantial projected operating deficit for the 1981-82 fiscal year, a reduction in personnel in non-essential services would be necessary in all divisions of City government. To effectuate the reduction in personnel, the City promulgated a layoff policy in which layoffs and reductions in rank would be based upon City-wide seniority, determined from each employee's length of continuous service from

---

7. The 1974 Decree provides: "The City of Memphis denies it has heretofore engaged in any pattern or practice of discrimination in hiring or promotion on the basis of race or sex but realizes that certain past practices of the City may have given rise to an inference that such practice may have occurred. . . .

"The City of Memphis and the United States, by agreeing to the issuance of this order, waive a hearing and finding of facts and conclusion of law on all issues raised by the Complaint . . . and the parties have mutually agreed to the entry of the consent decree, which shall not constitute an adjudication or admission by the City of any violation of law or findings on the merits of this case" (J.A. 99).

latest date of permanent employment (J.A. 85, ¶3). Employees in ranking positions possessed "bumping rights," *i.e.*, they could choose to "bump down" to a lower-ranking position rather than face layoff. The layoffs were scheduled for June 26, 1981, the ending pay period in the 1980-81 fiscal year.

The layoff policy adopted by the City was consistent with the Memorandum of Understanding between the City and Local 1784 of the International Association of Firefighters (hereinafter "Union"), which provided that seniority would govern layoffs and recalls (J.A. 119, Art. XIX, §5). "Seniority" was referred to as City-wide seniority (J.A. 117, Art. XIX, §1).

On May 4, 1981,[8] plaintiffs moved in the *Stotts* case for a temporary restraining order enjoining the City from laying off or reducing in rank any black employee in the Memphis Fire Department, because the layoffs would impair the results then achieved under the 1980 Decree. The following day, the Union (which had not been a party to the 1980 Decree) intervened by consent of the parties, and on May 8 a hearing was held on plaintiffs' request for preliminary injunctive relief.

The evidence adduced at the May 8 hearing revealed that approximately 450 City-funded positions within the various departments of City government were to be eliminated (J.A. 55).[9] Approximately 220 of the 450 positions were actually filled at that time; the remaining positions were funded but vacant. Within the Fire Department, 55 then-filled positions were to be eliminated, along with a significant number of funded but vacant positions (J.A. 55).[10]

---

8. Unless otherwise specified, all dates hereinafter refer to 1981.

9. A total of almost 1,000 positions, City-wide, were scheduled to be abolished (J.A. 54).

10. The Fire Department then employed over 1500 persons (Hearing Ex. 3, see p. 186 of the joint appendix in the Sixth Circuit).

It was estimated that 39 positions to be eliminated in the Fire Department were filled by employees who possessed bumping rights, enabling them to bump to a lower-ranking classification rather than be laid off. It was also estimated that approximately 40 Fire Department privates would ultimately be laid off. The 40 least senior employees on the seniority roster consisted of 25 white and 15 black employees(J.A. 68) These figures were based on preliminary forecasts and were subject to change due to attrition and the possibility of individuals choosing retirement rather than exercising their bumping rights.[11]

The evidence also showed that approximately 56% of the employees hired into the Fire Department since the entry of the 1974 Decree were black (J.A. 48).[12] The per-

---

11. Under the last-hired, first-fired seniority system, the projected layoffs and/or demotions in the affected classifications were to be as follows:

		Present	Positions Eliminated	
Lieutenants	white	211	1	
	black	29	16	
	total	240	17	
Drivers	white	296	7	
	black	15	10	
	total	311	17	
Inspectors	white	14	3	
	black	6	0	
	total	20	3	
Privates	white	497	25	
	black	85	15	
	total	582	40	(laid off)

12. According to the Tennessee Department of Employment Security, Tennessee Data for Affirmative Action Plans, 6th Edition (1980), non-whites constituted 32.8% of the total civilian labor force of Memphis, Shelby County, Standard Metropolitan Statistical Area (SMSA). These population figures were based on 1978 data.

centage of black employees in the Memphis Fire Department had increased from approximately 3% or 4% in 1974 to 11-1/2% in 1980. It was estimated that the seniority-based reduction in force would have resulted in a one percent (1%) decrease in minority employment in the Fire Department (J.A. 54).

At the conclusion of the hearing, the district court enjoined the City from implementing the seniority-based reduction in force under the last-hired, first-fired seniority policy within four classifications and instructed the City to propose a layoff policy consistent with the injunction (City Pet. A72, oral ruling; A77, written order). The court found that the layoff policy was not adopted with the intent or purpose to discriminate, but nevertheless concluded that it was not a bona fide seniority system because its *effects* were discriminatory.

On June 23, the district court expanded its order to include three additional classifications: supervisor-fire prevention, fire alarm operator I and clerk typist.[13] At that

---

13. The evidence revealed that the racial composition of the positions, and the planned layoffs were as follows:

		Present	Positions Eliminated
Supervisor-Fire Prevention	white	4	1
	black	1	1
	total	5	2
Fire Alarm Operator I	white	3	0
	black	4	2
	total	7	2
Clerk Typist	white	3	1
	black	6	0
	total	9	1

The clerk typist position was not actually affected by the court's orders as the original seniority system did not operate so as to reduce the percentage of minority employees.

time, the City orally presented its modified layoff plan for approval. By order entered June 26, the district court approved the modified seniority plan, and the City proceeded with the reduction in force. The reduction in force was still based upon seniority. However, junior black employees in the seven classifications affected by the injunction were protected so as not to reduce the percentage of minority employees in those classifications. Thus, non-minority employees with greater seniority than the skipped-over minority employees were laid off or reduced in rank. The actual layoffs under the court's orders are listed in Addendum B, hereto.[14]

On May 7, 1982, the United States Court of Appeals for the Sixth Circuit affirmed the orders of the district court. 679 F.2d 541 (Martin J., concurring in part, dissenting in part). The court of appeals found that the district court's holding that the layoff system was not bona fide was erroneous in the face of the uncontroverted fact that the system was adopted without discriminatory intent or purpose. Nevertheless, the court upheld the district court's action in modifying the consent decree and altering the existing seniority provisions between the City and the Union (which had not been a party to the 1980 Decree). Judge Martin concurred in the result only and dissented from the majority's holding that the district court could alter the existing seniority rights through modification of the 1980 Decree where no finding of discrimination had been made. 679 F.2d at 568-69.

---

14. Due to the difficult nature of identifying the actual employees to be affected and uncertainty as to who would or would not exercise their bumping rights the City could not provide an actual list of affected employees to the court. Only after the reduction in force was implemented was a final list available. This list was not included in the record in the district court but is included herein to assist in the Court's understanding of the factual issues below.

SUMMARY OF ARGUMENT

I. The modification of the 1980 Decree to enjoin the use of a bona fide seniority-based layoff system was not warranted by the Sixth Circuit's erroneous construction of the Decree, nor by the principle of changed circumstances. The court of appeals erroneously construed the 1980 Decree as requiring the City to maintain a certain level of minority employment. However, an examination of the Decree reveals that it had no such purpose; rather, the parties had agreed to specific affirmative hiring and promotion methods to achieve the stated goal of the Decree. The court of appeals' newly-fashioned obligation requiring the maintenance of a certain level of minority employment constitutes an improper judicial modification by construction. *Hughes v. United States*, 342 U.S. 353 (1952).

Nor does the principle of changed circumstances support modification in this case. The reduction in personnel under a bona fide seniority system did not transform the Decree into an instrument of wrong. The City remained obligated to increase minority employment through the agreed affirmative hiring and promotional goals, and there was no evidence that the City did not or would not continue to abide by its agreement. The unintended and temporary delay in achieving the long-term goal, resulting from economic conditions beyond the control of the City, did not so thwart the purpose of the Decree as to require judicial modification.

II. Even had changed circumstances warranted modification of the 1980 Decree, the district court exceeded its remedial authority by overriding the operation of a bona fide seniority system. Under Title VII, a district court's equitable authority must be drawn from the objectives of

the statute—to make victims of discrimination whole. As there was no finding by the district court that the minority employees protected from layoff in this case were victims of past hiring discrimination, the district court's award of relief exceeds the scope of its equitable authority under §706(g). *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977).

The Sixth Circuit completely ignored the specific immunization afforded bona fide seniority systems by Congress under §703(h). As there was no showing that the system was adopted with the intent to discriminate, the court's abrogation of the bona fide seniority system was improper. Moreover, the district court's requirement that the City insulate minority employees from the operation of a bona fide seniority system, without a finding of unlawful discrimination, constitutes a judicially-imposed preference in direct contravention of the express terms of §703(j).

III. Policy considerations also require reversal of the court's unsupported modification of the Decree. Here, the court's willingness to impose new obligations on a party to a consent decree, without a finding that the party has breached the terms of the decree, or without any finding of a new violation that would warrant modification, will have a chilling effect on the use of consent decrees to settle discrimination lawsuits.

IV. The district court's abrogation of a bona fide seniority system constitutes an improper judicial intrusion into the affairs of local government. Although the Decree provided for retention of jurisdiction for entry of orders necessary to effectuate the purpose of the Decree, that provision cannot be read as a retention of jurisdiction to expand or change that purpose. The City had implemented the non-discriminatory policies required by the De-

cree, and there was no evidence that the City had otherwise defaulted under its legal obligations. The district court improperly usurped the managerial prerogatives of local authorities by enjoining the use of a bona fide seniority system and expanding the Decree to require a certain level of minority employment.

ARGUMENT

I. THE DISTRICT COURT ERRED IN MODIFYING THE 1980 CONSENT DECREE TO PRECLUDE A REDUCTION IN FORCE PURSUANT TO A BONA FIDE SENIORITY SYSTEM WHERE THAT DECREE DID NOT PRECLUDE SENIORITY-BASED LAYOFFS.

This case presents the question as to the extent of the equitable power of the judiciary to impose (through modification of a consent decree) a type of unbargained for affirmative action on a party, despite the congressionally-mandated restrictions on the equitable authority of courts under Title VII. The City submits that judicial modification of the 1980 Decree to enjoin seniority-based layoffs for the purpose of maintaining a certain level of minority employment was improper.

A. The Consent Decree Does Not Impose an Obligation on the City to Deviate From Its Bona Fide Seniority System.

The Sixth Circuit's decision correctly noted that the 1980 Decree obligated the City to engage in certain affirmative action in hiring and promotional decisions to ultimately achieve a level of minority employment approximating that in the civilian labor force. The court, however, erroneously construed this obligation as a guarantee of a minimum level of minority employment in the event of layoffs and concluded that seniority-based layoffs could be precluded if minority employment was adversely affected. The court did not construe the Decree as written but, rather, as the court felt it should have been written by the

parties.[15] This judicial rewriting of the Decree contravenes the directives of both Congress and this Court.

In *United States v. Armour & Co.*, 402 U.S. 673 (1971), the Court detailed the proper approach for a court to follow in construing a consent decree:

> Thus the *decree* itself cannot be said to have a purpose; rather the *parties* have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve. For these reasons, the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. Because the defendant has, by the decree, waived his right to litigate the issues raised, a right guaranteed to him by the Due Process Clause, the conditions upon which he has given that waiver must be respected, and the instrument must be construed *as it is written, and not as it might have been written* had the plaintiff established his factual claims and legal theories in litigation. *Id.* at 681-82 (footnote omitted; last emphasis added).

The court of appeals incorrectly substituted its judgment for the specific agreement of the parties. Such judicial modification disguised as construction is not proper. *United States v. Atlantic Refining Co.*, 360 U.S. 19 (1959); *Hughes v. United States*, 342 U.S. 353 (1952).

The language of the Decree reveals that the purpose of the parties was to raise the level of minority representation in the Memphis Fire Department by setting affirma-

---

15. The City submits that the court's invalidation of the bona fide seniority system would have been impermissible even if plaintiffs had prevailed in litigation. See Section II, *infra*.

tive hiring and promotional goals, a purpose which remains in full force and effect. By entering into this compromise, it was *not* the City's intent to guarantee a certain level or percentage of minority employment at all times and at the expense of non-minority employees.[16] Further, the court's imposition on the City of a new obligation to maintain a level of minority employment in the event of a reduction in force also runs contrary to the City's previously negotiated agreement with the Union providing for a method to be used for layoffs.[17] The 1980 Decree's silence regarding layoffs in no way manifests an intent to cancel the terms of its existing contract. Thus, the court's reading of the 1980 Decree so as to preclude seniority-based layoffs departs from standard precepts of contract construction which are traditionally applied to consent decrees. *See United States v. ITT Continental Baking Co.*, 420 U.S. 223 (1975).

A similar expansive reading of a consent decree was rejected by this Court in *Hughes v. United States*, 342 U.S. 353 (1952). In *Hughes*, a district court approved a modification of a consent decree entered into in settlement of

---

16. This conclusion is supported by the testimony of the Mayor of Memphis, who specifically stated that he would not have agreed to a layoff policy other than by seniority: "It is my opinion that under the Consent Decree, we agreed to hire, we agreed to promote, and we agreed to do it in percentages, or what have you. . . . But I certainly felt differently towards any policy that would put people out of work, put them on the street, based on anything other than the thing that has been used in every city in this country, . . . and by the city [of Memphis], and in the Consent Decree since 1974, and that is the seniority policy in the union agreement. . . ." (J.A. 37-38).

17. Additionally, the 1974 Decree reveals that the goals of minority staffing were subject to anticipated budgeted vacancies and were not to conflict with employment expectations of non-minority employees (see ¶10 of 1974 Decree, J.A. 105). Nor did the 1974 Decree require the hiring of unnecessary personnel in order to meet the interim goals (J.A. 101, ¶3), or the establishment of a specific numerical ratio of black firefighters (J.A. 105-06, ¶10).

an antitrust action to compel the divestment of stock by Howard Hughes. The lower court reasoned that the divestiture was necessary to achieve the basic purpose of the decree, which was explained as the divorcing of production-distribution companies from theater exhibition companies. This Court reversed, holding that the court erred in substituting its own means to achieve the purpose of the decree where the parties had provided their own detailed plans to resolve the dispute. *Id.* at 357. As in *Hughes*, the parties here have negotiated specific means to achieve their purpose of raising minority employment in the Memphis Fire Department, and the court had no authority to impose additional obligations in order to achieve its own desired "purpose" of the Decree.

The Sixth Circuit's rationale in construing the silence of the 1980 Decree to proscribe seniority-based layoffs had been previously rejected by a different panel of the Sixth Circuit in *Brown v. Neeb*, 644 F.2d 551 (1981). There, Judge Brown, writing for the majority,[18] stated:

> This consent decree is absolutely silent with respect to layoffs. In order to construe it to proscribe layoffs on the basis of seniority in spite of its silence, we have to construe it by implication to provide that the City of Toledo was to forego the right to layoff at all unless it laid off other than on the basis of seniority in which case it would be laying off contrary to its collective bargaining contract. . . . To me, this is not a reasonable construction of the consent

---

18. West's Federal Reporter mistakenly describes Judge Brown's opinion as a concurrence. It was, in fact, the majority opinion. *See* the concurring and dissenting opinion of Judge Martin in *Stotts v. Memphis Fire Department*, 679 F.2d at 568; *Oliver v. Kalamazoo Board of Education*, 706 F.2d 757, 764 n.7 (6th Cir. 1983) (Brown, J.); Hamburger, *Alternatives to Seniority-Based Layoffs: Reconciling* Teamsters, Weber *and the Goal of Equal Employment Opportunity*, 15 U. Mich. J. L. Ref. 523, 536 n.76 (1982).

> decree. On the contrary, if layoffs had been within the contemplation of the parties at the time they negotiated and submitted the consent decree, *such would have been covered in the decree.* *Id.* at 564-65 (emphasis added).

In *Brown*, however, the court approved injunctive relief to enjoin the layoffs because of the City of Toledo's failure in meeting its affirmative obligations under the decree.[19]

The court of appeals failed to even mention in its lengthy opinion in this case an earlier decision of the Sixth Circuit which, under quite similar facts to those here, also reached the opposite conclusion. In *Youngblood v. Dalzell*, 568 F.2d 506 (6th Cir. 1978), the court refused to enjoin seniority-based layoffs in light of a consent decree which was silent on the issue of layoffs. The court properly found that, as the "negotiated product did not commit the City to hire any specific number of minority firemen nor commit the City to any policy at all in relation to forced employment reduction and layoffs," an expansive reading of the consent decree to include such obligation was not justified. *Id.* at 508.

Similarly, in *Jersey Central Power & Light Co. v. Local Union 327, I.B.E.W.*, 508 F.2d 687 (3rd Cir. 1975), *cert. denied*, 425 U.S. 998 (1976), the court held that a conciliation agreement among employer, unions and the EEOC, setting forth a program to increase the percentage of minority and female employees by affirmative hiring and

---

19. To support its conclusion, the court below stated that the instant factual situation was virtually identical to that in *Brown*. In fact, there are critical factual distinctions between the two cases. In *Brown*, the court found that the City of Toledo had not made a good faith effort to comply with its obligations under the decree. Additionally, the parties did not include an exculpatory or non-admission clause in that decree. Both crucial factors are absent here. Indeed, the record demonstrates conclusively that the City complied with the terms of the Decree.

promotion action, should not be construed to prevent the operation of a bona fide seniority system for reduction of personnel, even though the layoffs had a discriminatory impact on the minority and female employees. The court based its holding on the fact that the conciliation agreement did not contain any express seniority provision or expressly modify or alter the seniority provisions found in the collective bargaining agreement between the employer and the unions. *Id.* at 695-96.

The sound reasoning of *Neeb, Youngblood* and *Jersey Central Power* regarding construction of consent decrees is equally applicable here. The court of appeals' strained interpretation of the 1980 Decree creating a *new* obligation to maintain a level of minority employment contravenes this Court's holding in *Armour* and must be reversed.

B. The Court's Reliance on Changed Circumstances to Support Modification of the Consent Decree Is Misplaced.

The court of appeals, perhaps realizing that its construction of the 1980 Decree to expand the obligations of the City was suspect, offered another basis for judicial modification of the Decree, that of changed circumstances. *Stotts,* 679 F.2d at 562-63. Although the court purportedly predicated its decision on this Court's long-established doctrines governing modification of consent decrees due to changed circumstances, the court misapplied those very principles.

In *United States v. Swift & Co.*, 286 U.S. 106 (1932), this Court declared that a court may revoke or modify a consent decree if changed circumstances had transformed the original decree into an instrument of wrong. However, the Court cautioned that modification should not be predicated on anything "less than a clear showing of

grievous wrong evoked by new and unforeseen conditions." *Id.* at 119. The power to modify the terms of a consent decree due to changed circumstances is not to be exercised lightly. *EEOC v. Safeway Stores*, 611 F.2d 795, 799 (10th Cir. 1979), *cert. denied*, 446 U.S. 952 (1980). Here the court of appeals held that the intervening economic crisis of the City and the resulting layoffs were unforeseen circumstances which would have impaired the affirmative action previously achieved under the Decree. 679 F.2d at 563.[20] The City respectfully submits that the court's conclusion as to the discriminatory effects of the reduction in rank does not support judicial modification of the 1980 Decree—imposing a new obligation on the parties—which exceeds the bounds of that court's remedial authority.

Here, the 1980 Decree was not transformed into an instrument of wrong. Under the Decree, the City agreed to meet minority hiring and promotional goals, which the City has met and to which the City remains committed. There was no suggestion that the City would repudiate its hiring and promotional obligations, nor has the City done so.[21]

---

20. Although the reduction in force was unforeseen, it was not unforeseeable. The parties did not anticipate an economic downturn which caused the reduction in force, but the parties could have provided for such event had they wished. *See EEOC v. McCall Printing Corp.*, 633 F.2d 1232 (6th Cir. 1980); *Airline Stewards and Stewardesses v. American Airlines*, 573 F.2d 960 (7th Cir.), *cert. denied*, 439 U.S. 876 (1978). Further, it should be noted that the City had negotiated an agreement with the Union in 1975 regarding reductions in force and had reaffirmed that agreement in the 1978-1981 Memorandum of Understanding. Thus, the parties' failure to negotiate provisions concerning reduction in personnel or constructive seniority should be seen as a result of a compromise negotiated at arms' length between the parties, and the court should not now be allowed to rewrite the City's obligations as set forth in the 1980 Decree under the guise of changed circumstances.

21. Although the Sixth Circuit termed the 1981 announcement of the reduction in force as an anticipatory repudiation of both the 1974 and 1980 Decrees, 679 F.2d at 561, since 1981, the City has exceeded the 50% minority hiring goals set forth under both decrees.

Moreover, the Decree itself could not be considered as an instrument of wrong merely because it did not preclude the lawful use of a bona fide seniority-based layoff system.[22]

In a closely analogous case, the Court of Appeals for the Third Circuit reversed a district court's modification of a consent decree which would have imposed additional obligations on a party. In *Fox v. United States Department of Housing*, 680 F.2d 315 (3rd Cir. 1982), the parties voluntarily entered into the consent decree prior to an adjudication of the plaintiffs' claims, and the defendants did not admit any violation of applicable laws. Due to the subsequent unexpected climb in interest rates, the plaintiffs sought to have the decree modified to require the defendants to provide a particular method of financing as to which the decree was silent. In noting that there was no adjudication or admission that the defendant had violated the plaintiffs' legal rights, the Third Circuit rejected the plaintiffs' claim that modification of the decree was warranted, stating:

> The contention is solely that the plaintiffs' expectations have been frustrated by changes in the mortgage market, changes beyond the control of the defendants that might have been anticipated by the plaintiffs. To impose additional duties under the decree because of those changes is to disregard the basic rights of litigants who waive their right to litigate defenses by consenting to have a decree entered against them.

---

22. Significantly, although the 1974 Decree also dictated the same affirmative hiring measures as the 1980 Decree, the United States, plaintiff in the earlier action, neither filed suit nor sought to intervene in the request for injunctive relief. Indeed, it is petitioner's understanding that the United States intends to submit an *amicus curiae* brief on behalf of the City in this matter.

> The conditions upon which rights are waived must be respected. *Id.* at 323 (citations omitted).

As in *Fox*, the temporary delay in achieving the long-term goal, due to economic circumstances beyond the control of the City, does not warrant modification of the Decree.

It is especially ironic that the seniority-based layoffs enjoined below would have had no greater long-term adverse effect on the City's compliance with its obligation to increase minority employment under the 1980 Decree than would the layoff plan imposed by the district court. Under both layoff plans, the City would first recall and promote those employees affected by the reduction in force. Thus, before any further progress was made by the City toward achieving the long-term goal, the affected employees would be returned to their previous jobs. New hiring would be equally delayed because of the economic conditions regardless of the policy used, and renewed implementation of the affirmative hiring goals would occur at precisely the same moment under either plan. Thus, the original layoff plan cannot be interpreted as thwarting the basic purpose of the decree so as to justify its judicial modification. *See Chrysler Corporation v. United States*, 316 U.S. 556, 562 (1942); *United States v. Swift & Co.*, *supra*.

II. THE COURT ERRONEOUSLY ENJOINED THE USE OF A BONA FIDE SENIORITY SYSTEM WITHOUT A FINDING OF UNLAWFUL DISCRIMINATION AGAINST THE CITY.

Even assuming, *arguendo*, that the district court possessed the power to modify the 1980 Decree, the court exceeded its equitable authority by enjoining the use of a bona fide seniority system. In effect, the modification insulated minority employees from layoffs or reductions in rank solely because of their race, despite a finding that

the layoff policy was adopted without a discriminatory intent and in the absence of any findings that the employees so protected were victims of unlawful discrimination. Due to the court's misapplication of the controlling law, as set forth by this Court, the modification of the 1980 Decree to override the bona fide seniority system must be reversed.

The court of appeals brushed aside arguments that modification of the 1980 Decree to require that layoffs be based on race constituted an award of constructive seniority to non-victims in contravention of this Court's holdings in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), and *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976). The Sixth Circuit, without attempting to reconcile its decision with prior holdings of this Court, merely stated that the parties' reliance on *Teamsters* and *Franks* was "misplaced." *Stotts*, 679 F.2d at 564.

The court of appeals advanced three theories to justify its decision: 1) a settlement theory, 2) a fictional remedial award theory, and 3) a judicial derivative power theory. Each theory, however, ignores the facts of this case, and none provides support for the court's decision.

The settlement theory is premised on the existence of a voluntary settlement regarding seniority claims, a fact absent from this case. The court's reliance on *Airline Stewards and Stewardesses v. American Airlines*, 573 F.2d 960 (7th Cir.), *cert. denied*, 439 U.S. 876 (1978), is misplaced. Unlike American Airlines, the City has never agreed to a modification of its existing seniority policy. Secondly, the court surmised that, if a constitutional violation had been established by the original plaintiffs, the court would have had the authority to award the relief granted herein. The simple answer is, however, that no such violation was established. For the court to now

assume that the City was guilty of discrimination and had violated the constitutional rights of its employees, in the absence of trial and judgment, is a wholly improper exercise of judicial power. The assumption also utterly ignores the policy considerations underlying consent decrees. *See United States v. Armour & Co.*, 402 U.S. 673 (1971); *Fox v. United States Department of Housing*, 680 F.2d 315 (3rd Cir. 1982). Finally, the court's creation of a purported derivative power conferred upon the court under the consent decree is imaginative but unfounded. In effect, the court concludes that the City has surrendered its managerial prerogatives to the court under the decree and, because the City would have the right to *voluntarily* modify the seniority system without violating Title VII, the court could likewise act. Neither the consent decree nor any case or statutory law supports the existence of such a derivative power to compel modification of a seniority system over the objection of a party and without a finding of discrimination.

A. The Abrogation of the Bona Fide Seniority System Exceeded the Court's Remedial Authority Under §§703(h) and 706(g) of Title VII.

Although a court's remedial powers may be broad, they are not plenary. *See Hills v. Gautreaux*, 425 U.S. 284, 293 (1976). The scope of the equitable powers of a court to enforce substantive rights must be drawn from the statute creating those substantive rights. *See Teamsters v. United States*, 431 U.S. 324, 364 (1977); *System Federation No. 91 v. Wright*, 364 U.S. 642, 651 (1961). A court's remedial authority to enforce Title VII is contained in Section 706(g) of Title VII, 42 U.S.C. §2000e-5(g), which provides, in part:

> If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful

> employment practice charged in the complaint, the court may enjoin the respondent in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include . . . reinstatement, or hiring of employees . . . or any other equitable relief as the court deems appropriate. . . .

Congress, however, limited the equitable powers of a court by the last sentence of §706(g), which reads: "No order of the court shall require the . . . hiring, reinstatement, or promotion of an individual as an employee . . . if such individual . . . was suspended or discharged for any reason other than discrimination on account of race. . . ."

Once the equitable powers of court have been invoked under Title VII, judicial exercise of that authority requires "the principled application of standards consistent with [congressional] purposes and not 'equity [which] varies like the Chancellor's foot.'" *Ford Motor Co. v. EEOC*, 102 S.Ct. 3057, 3063 (1982), quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417 (1975). The express congressional limitations under §706(g) permit the courts to fashion appropriate relief to make *victims* of discrimination whole but do not allow the "remedial" awards of employment or reinstatement to *non*-victims.[23]

The legislative history of §706(g) supports this conclusion. During the congressional debate over the passage of Title VII, Senators Clark and Case, the bi-

---

23. Although this action was brought pursuant to Title VII and 42 U.S.C. §§1981 and 1983, there is no distinction in a court's equitable authority under the statutes. *Gurmankin v. Costanzo*, 556 F.2d 184, 188 (3rd Cir. 1977), *cert. denied*, 450 U.S. 923 (1981). Thus, the proper scope of the court's equitable power will be examined in light of the statutory objectives of Title VII rather than §§1981 and 1983, which require a heavier burden of proof than that of Title VII. *See Washington v. Davis*, 426 U.S. 229 (1976); *General Bldg. Contractors Ass'n v. Pennsylvania*, 102 S.Ct. 3141 (1982).

partisan "captains" for Title VII, entered an interpretive memorandum into the Congressional Record. The memorandum, characterized by this Court as one of the "authoritative indicators" of the meaning of Title VII (*see American Tobacco Co. v. Patterson*, 456 U.S. 63, 73 (1982), and *Teamsters*, 431 U.S. at 352), explained the remedial limitations contained in §706(g):

> No court order can require hiring, reinstatement, admission to membership, or payment of back pay *for anyone who was not discriminated against in violation of this title.* This is stated expressly in the last sentence of section [706(g)] which makes clear what is implicit throughout the whole title; that employers may hire and fire, promote and refuse to promote for any reason, good or bad, provided only that individuals may not be discriminated against because of race. . . .

110 Cong. Rec. 7214 (1964) (emphasis supplied); *see also* remarks of Senator Humphrey, *id.* at 6549. Later, in passing the 1972 amendments to Title VII, which more broadly defined the equitable power of the courts, Congress reaffirmed the equitable limitations under §706(g) to make *victims* of discrimination whole, as set forth in the Section-by-Section Analysis introduced by Senator Williams:

> In dealing with the present section 706(g) the courts have stressed that the scope of relief under that section of the Act is intended to make the victims of unlawful discrimination whole, and that attainment of this objective rests not only upon the elimination of the particular unlawful employment practice complained of, but also requires that persons aggrieved by the consequences and effects of the unlawful employment practice be, so far as possible, restored to a position where they would have been were it not for the unlawful discrimination. 118 Cong. Rec. 7168 (1972).

The clear objective of Title VII, to provide remedies only for *victims* of unlawful discrimination, has been recognized by this Court in numerous decisions. In *Albemarle Paper, supra,* the Court identified the central purposes of Title VII: to eradicate discrimination in employment and to make persons whole for injuries suffered through past discrimination. 422 U.S. at 421. In *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976), this Court viewed the 1972 amendment to Title VII as an "emphatic confirmation that federal courts are empowered to fashion such relief . . . making whole insofar as possible the *victims* of racial discrimination in hiring." *Id.* at 764 (emphasis added). Recently, in *Ford Motor Co. v. EEOC*, 102 S.Ct. 3057, 3065, this Court reiterated that view: "Title VII's secondary, fallback purpose is to compensate the *victims* for their injuries" (emphasis added). *See also Zipes v. Trans World Airlines*, 455 U.S. 385, *reh'g denied*, 102 S.Ct. 2001 (1982).

In the instant case, however, there has been no finding by any court that the minority employees who were insulated from the operation of a bona fide seniority system were in fact victims of prior discrimination. Affording relief to non-victims does not comport with the "make-whole" purpose of Title VII, and in fact conflicts with congressional purpose as clearly expressed in the statute and as equally clearly expounded by this Court in prior cases.

Nowhere is a court's power to grant remedial, "make-whole" relief under Title VII more expressly limited than in the area of seniority relief. This Court has repeatedly recognized the "overriding importance" of seniority provisions in collective bargaining agreements. *American Tobacco Co. v. Patterson*, 456 U.S. 63, 76 (1982), citing *Humphrey v. Moore*, 375 U.S. 335, 346 (1964), and *Trans World Airlines v. Hardison*, 432 U.S. 63, 79 (1977).

Such seniority provisions have engendered strong expectations and have received wide acceptance within the field of labor relations. *Oliver v. Kalamazoo Board of Education*, 706 F.2d 757, 763 (6th Cir. 1983); Summers and Love, *Work Sharing As an Alternative to Layoffs by Seniority: Title VII Remedies in Recession*, 124 U. of Pa. L. Rev. 893, 899-906 (1976).

Congress recognized the unique status of seniority provisions in employment relationships, and recognized also the possible conflict between seniority rights and Title VII. Congress resolved that policy conflict by explicitly granting to bona fide seniority systems immunity from attack. *See Teamsters*, 431 U.S. at 350. Section 703(h) of the Act provides, in part:

> Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority system, . . . provided that such differences are not the result of an intention to discriminate because of race . . .

Under §703(h), discriminatory *effects* of the operation of a bona fide seniority system are insufficient to warrant abrogation of the seniority system; rather, a finding of discriminatory *purpose* in the adoption of such system is necessary to enjoin its operation. *Pullman-Standard v. Swint*, 456 U.S. 273 (1982). This protection against attack applies equally to all seniority systems whether promulgated before or after enactment of Title VII. *American Tobacco Co. v. Patterson*, 456 U.S. at 75-76. Thus, judicial abrogation of seniority systems without an adjudication of discriminatory purpose is improper.

This Court's earlier holdings in *Franks*, *Teamsters*, and *Zipes*, *supra*, and *United Air Lines v. Evans*, 431 U.S. 553 (1977), clearly establish that a court may properly award constructive seniority as a remedy to identifiable victims of discrimination but may not otherwise impair the operation of a bona fide system. Persons adjudicated to be victims of discrimination may be judicially "slotted" into their "rightful place" on the seniority roster, precisely in order to permit future operation of the seniority system as a means of fairly allocating employment benefits and rights. *See Franks*, 424 U.S. at 764-66. Because the Sixth Circuit specifically recognized that the seniority-based layoff policy was bona fide, the court erred in ignoring the congressional mandated protection afforded to that system by §703(h).

Last term this Court unequivocally explained that "constructive seniority can only be viewed as compensation for a past wrong." *Guardians Ass'n v. Civil Service Commission of New York*, 51 U.S.L.W. 5105 (U.S. July 1, 1983). The compensatory nature of seniority relief has been previously noted by this Court in defining the permissible extent of a court's remedial powers. *Franks* held that an award of constructive seniority may be a proper form of relief to identifiable victims of discrimination, but cautioned that "evidence that particular individuals were not in fact victims of racial discrimination will be material." 424 U.S. at 772. The following year, in *Teamsters*, this Court approved an award of retroactive seniority but carefully noted that the district court on remand would be required to determine individually which of the minority employees were *actual victims* of discrimination.[24] 431

---

24. Although the decree in *Teamsters* did not constitute an adjudication of discrimination, the consent decree was entered into only after summary judgment was granted in favor of the plaintiffs, and the decree explicitly provided for the district court to identify the *actual discriminatees* in order to fashion the appropriate remedy. 431 U.S. at 330 n.4.

U.S. at 371-72. *See also United Air Lines v. Evans*, 431 U.S. 553, 559 (1977). More recently, in *Zipes v. Trans World Airlines*, 455 U.S. 385 (1982), this Court approved a remedial award of retroactive seniority to a class of victims of discrimination. The concurring opinion of Justice Powell, in which the Chief Justice and Justice Rehnquist joined, emphasized that "a violation of Title VII is a *prerequisite* to disturbing rights under a bona fide seniority system protected by §703(h)." *Id.* at 401 (emphasis added). Thus, the holdings of this Court have consistently interpreted §703(h) as precluding precisely what the court below affirmed—an award of constructive seniority to persons who have not been adjudged victims of past discrimination.[25]

In this case, there has never been an adjudication or finding of unlawful discrimination by the City. The City has never admitted that it has engaged in any unlawful employment practice, and the City has never agreed to a modification of its seniority system. Despite finding that the City's seniority-based layoff policy was bona fide, the court below nevertheless rewrote that policy in an unwarranted expansion of the equitable powers granted by Congress under Title VII.

The court of appeals also erroneously concluded that its modification of the seniority system would have been well within its equitable power if discrimination by the City had been established. *Stotts*, 679 F.2d at 566. However, this Court's decisions establish that the court would not

---

25. The final layoff list, Addendum B, indicates that the minority employees afforded protection against layoff were not victims of hiring discrimination. All privates laid off have seniority dates of 1979 or after. The evidence adduced at the hearing on plaintiffs' request for injunctive relief established that the City had a 56% minority hiring rate since 1974, far exceeding the minority percentage within the civilian labor force.

have had the authority to grant such a "remedy" to *non*-victims under Title VII, even had the controversy below been litigated.[26] This Court has never approved such an exercise of equitable authority to afford benefits to persons solely on account of their race and regardless of whether or not they had been victimized by discrimination.

B. The Court's Modification of the Seniority System Constitutes a Judicially-Mandated Preference Based on Race in Direct Violation of §703(j).

Because no finding of unlawful discrimination against the affected minority employees had ever been made, the district court's modification of the seniority system to maintain a specific percentage of minority employment constitutes an award of preferential status in violation of the express terms and objectives of Title VII. Section §703(j) provides, in part:

> Nothing contained in this title shall be interpreted to *require* any employer . . . subject to this title to grant any preferential treatment to any individual or to any group because of the race . . . of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race . . . employed by any employer . . . in comparison with the total number or percentage of persons of such race . . . in the available work force . . . . (Emphasis added.)

The language of §703(j) is free from doubt and "must be taken as the final expression of the legislative intent." *Caminetti v. United States*, 242 U.S. 470, 490 (1917). An

---

26. Nor would the court have had the authority to award relief to non-victims under §§1981 and 1983. No violations of those statutes have ever been established either.

employer cannot be required to afford preferential treatment solely because of an imbalance in its work force. This Court has long held that "[d]iscriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

Section 703(j) does not preclude an award of preferential treatment as a remedy for victims of discrimination. But it does expressly preclude awarding preferential treatment absent a finding of discrimination. *See Teamsters*, 431 U.S. 324, 374 n.61 (1977). Court-ordered preferences have never been approved by this Court without the existence of a constitutional or statutory violation. *Regents of University of California v. Bakke*, 438 U.S. 265, 302 (1978). In *Bakke*, this Court reaffirmed the necessity of a finding of a constitutional violation to invoke court-ordered preferences, stating:

> Indeed, §703(j) of the Act makes it clear that preferential treatment for an individual or minority group to correct an existing "imbalance" may not be required under Title VII. 42 U.S.C. §2000e-2(j). Thus, Title VII principles support the proposition that *findings of discrimination must precede the fashioning of remedial measures* embodying racial classifications. *Id.* at 308-09, n.44 (emphasis added).

Accordingly, the court-imposed preference below runs afoul of the clear mandate of §703(j).

Although the precise language of §703(j) is persuasive evidence of the purpose of the statute, *see United States v. American Trucking Ass'ns*, 310 U.S. 534, 543 (1940), the legislative history of §703(j) provides firm additional support for reversal of the lower court's award of preferential treatment to non-victims. In *United Steelworkers of America v. Weber*, 443 U.S.

193 (1979), this Court noted that §703(j) was enacted to alleviate fears of "undue 'Federal Government interference with private business because of some Federal employee's ideas about racial balance or racial imbalance.'" *Id.* at 206, quoting 110 Cong. Rec. 14314 (1964) (Remarks of Sen. Miller). This Court further noted that the congressional comments "were intended as assurances that Title VII would not allow establishment of systems 'to maintain racial balance in employment.'" *Id.* quoting 110 Cong. Rec. at 11848.[27] This Court concluded that a voluntary affirmative action plan was not an impermissible preference precluded by §703(j), because the employer was not *required* to implement such a plan.[28] The reasonableness of the plan was founded upon the fact that it was a temporary tool for remedying past discrimination "without attempting to 'maintain' a previously achieved balance." *Id.* at 216 (Blackmun, J., concurring).

Here, by contrast, the court required the City to maintain a racial balance without a prior judicial finding of discrimination. The court's orders were not based upon the City's failure to abide by its obligations under the 1980 Decree; the City's compliance was both clear and unchallenged. Rather, the court's orders were issued solely

---

27. Justice Rehnquist, in his opinion dissenting on other grounds, cited the comments of Representatives Celler and Minish as further indicating the purpose of §703(j). Representative Celler stated: "Even [a] court could not order that any preference be given to any particular race, religion or other group, but would be limited to ordering an end to discrimination." 443 U.S. at 233, 110 Cong. Rec. 1518. Representative Minish added: "Under title VII, employment will be on the basis of merit, not of race. This means no quota system will be set up, . . . and no one will be given a vested right to demand employment for a certain job." *Id.* at 233-34 n.13, 110 Cong Rec. 1600.

28. In his concurring opinion, Justice Blackmun found that the preferential hiring was a reasonable response by a private employer "whether or not a court, on there facts, could order the same step as a remedy." *Id.* at 211.

to prevent an expected reduction of minority employment (caused by economic conditions) which would have resulted from the operation of a concededly bona fide seniority-based layoff policy. The City voluntarily agreed to affirmative action in hiring and promotion, but it did not voluntarily agree to maintain a fixed level of minority employment. The court's mandate to retain certain employees (and to lay off certain others) solely because of their race transgresses the permissible bounds of involuntary affirmative relief.

Courts of appeals have consistently rejected court-imposed preferential treatment absent a finding of discrimination. *See Waters v. Wisconsin Steel Works of International Harvester Co.*, 502 F.2d 1309 (7th Cir. 1974), *cert. denied*, 425 U.S. 997 (1976); *Watkins v. United Steel Workers Local No. 2369*, 516 F.2d 41 (5th Cir. 1975); *Chance v. Board of Examiners*, 534 F.2d 993 (2d Cir. 1976), *cert. denied*, 431 U.S. 965, *reh'g denied*, 434 U.S. 881 (1977). In *Watkins* the district court, as here, required an employer to ignore seniority and lay off employees in proportion to the racial composition of the work force, notwithstanding the absence of a judicial finding of discrimination. The Fifth Circuit reversed, holding that the abrogation of seniority rights in the absence of a violation constituted an impermissible preference under §703(j), 516 F.2d at 46:

> To hold the seniority plan discriminatory as to the plaintiffs in this case requires a determination that blacks not otherwise personally discriminated against should be treated preferentially over equal whites. . . . The result which plaintiffs seek, therefore, is not that personal remedial relief available under Title VII, but rather a preferential treatment on the basis of race which Congress specifically prohibited in Section 703(j).

In *Chance v. Board of Examiners*, 534 F.2d at 998, the Second Circuit Court of Appeals also rejected the judicial imposition of a racially-based layoff policy where no discriminatory hiring practices had been proved. There, the court distinguished between proper exercise of the court's remedial power and impermissible preferential treatment:

> If a minority worker has been kept from his rightful place on the seniority list by his inability to pass a discriminatory examination, he may, in some instances, be entitled to preferential treatment—not because he is Black, but because, and *only to the extent* that, he has been discriminated against. *Id.* at 999 (emphasis added).

The Second Circuit further noted that an award is forbidden when no unlawful conduct has been proved, stating: "[T]he non-remedial distortion of a seniority system through preferential treatment based solely upon race is a form of reverse discrimination specifically proscribed by Congress." *Id.* at 998.

The express prohibition of §703(j) against judicially-imposed, non-remedial preferential treatment, as well as the legislative history and judicial interpretation of that section, require a reversal of the lower court's decision.

III. THE DECISION BELOW WILL HAVE A CHILLING EFFECT ON THE USE OF VOLUNTARY CONSENT DECREES.

Voluntary settlement of Title VII suits is a preferred means of achieving elimination of employment discrimination. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). Judicial power to modify consent decrees to include provisions which were not agreed to by the parties and which override contractual obligations will discourage

future use of consent agreements to settle discrimination lawsuits by both private and public employers.

In reaching the compromise agreement embodied in the 1980 Decree, the minority employees agreed that:

> Both plaintiffs and the class they represent shall seek no further relief for the acts, practices or omissions alleged in the complaints save to enforce the provisions of this Decree, thereby waiving the right to seek further relief (City Pet. A61).

The City fully expected, therefore, that the terms of the Decree would not be enlarged absent a showing of a new violation or a showing that the City had not complied with the Decree. The court below nevertheless imposed additional obligations upon the City, notwithstanding the uncontroverted evidence that the City had complied fully with the terms of the Decree. If judicial power exists to modify the parties' contract without an adjudicated basis for doing so, both the integrity of the agreement itself and the very reasons why the parties voluntarily accept binding consent decrees are utterly destroyed.

That very concern was aptly expressed by the Third Circuit in *Fox v. United States Department of Housing*, 680 F.2d 315 (1982). The court rejected the plaintiff's request to modify a consent decree to include an additional obligation, stating:

> As with all final judgments, the parties have a strong interest in the finality of the decision; in addition, when the plaintiffs have made a "free, calculated and deliberate choice to submit to an agreed upon decree rather than seek a more favorable litigated judgment their burden . . . is perhaps even more formidable than had they litigated and lost." *Id.* at 322 (citation omitted).

The decision below, which relieves the plaintiffs from their negotiated agreement, destroys any reasonable assurance that negotiated conditions contained in similar agreements will be enforced. Unless reversed, it will surely result in a reluctance of other municipalities and private employers to enter into consent decrees. *See United States v. ITT Continental Baking Co.*, 420 U.S. 223, 249 (1975) (Stewart, J., dissenting, joined by the Chief Justice and Justices Powell and Rehnquist). Such policy considerations dictate that the modification of the consent decree, without a finding of a breach of the terms of the Decree or a new violation warranting remedial action, ought to be reversed.

IV. THE DECISION BELOW CONSTITUTES AN IMPROPER JUDICIAL INTRUSION INTO LOCAL GOVERNMENTAL AFFAIRS.

In fashioning equitable remedies for racial discrimination, this Court has recognized the possibility that judges may overreach into local affairs and has cautioned federal courts to be mindful of the interests of state and local authorities in managing their own affairs. *Milliken v. Bradley*, 433 U.S. 267, 282 (1977). As stated by this Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1971):

> Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults.

The power of the federal courts to restructure the operation of local government "may be exercised only on the basis of a constitutional violation." *Milliken v. Bradley*, 418 U.S. 717, 738 (1974), quoting *Swann*, 402 U.S. at 16. *Accord, Dayton Board of Education v. Brinkman*, 433 U.S. 406, 419-20 (1977).

Rewriting the City's bona fide seniority system in the absence of an adjudication that the City has breached its legal duty constitutes an excessive and unwarranted judicial intrusion into the local affairs of the City of Memphis. The Sixth Circuit attempted to bring its opinion within the proper bounds of its authority by stating that the district court's orders merely prohibited the layoffs as proposed, inferring that the City was free to choose alternative solutions to its financial problems. Such disclaimer, however, is mere sophistry.

The district court's orders did not merely enjoin the layoffs. Rather, the court ordered the City to propose an alternate method for the layoffs and then, by the order entered on June 26, 1981, required layoffs of Fire Department personnel which contravened both the seniority provisions contained in the Memorandum of Understanding between the City and the Union and the City's existing layoff policy. A court's imposition of a race-conscious layoff policy on an objecting municipality and union, without a finding of racial discrimination, transgresses the permissible bounds of judicial authority as expressed in *Swann* and *Milliken I*.

Nor can it be said that the local authorities had "defaulted." The evidence below does not suggest that (since 1974) the City's hiring policies were discriminatory. Rather, the statistics cited by the Sixth Circuit reveal that between March 24, 1972 (the effective date of Title VII as to municipalities), and September 1977, four years prior to the layoffs, 26% of Fire personnel hired were black. 679 F.2d at 578-79. When compared to the 1978 census data (32.8% black civilian labor force),[29] the statistics do not reveal a default by the City. Once having implemented nondiscriminatory hiring practices, the district court is not

---

29. See n.12, *supra*.

empowered to ensure a racial balance in the City's work force by requiring that a certain percentage of minority employment be maintained. *See Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 436-37 (1976). As no constitutional or statutory violation was (or could be) found by the district court based upon utilization of a neutral, bona fide seniority system, the court's intrusion into the administration of the local authority's employment policies in this case was clearly improper.

CONCLUSION

Based upon the foregoing reasons, the decision of the Court of Appeals should be reversed, with instructions to dismiss the request for injunctive relief.

CLIFFORD D. PIERCE, JR.
(Counsel of Record)
City Attorney
125 North Mid-America Mall
Memphis, Tennessee 38103
(901) 528-2614

LOUIS P. BRITT, III
Staff Attorney
Office of the City Attorney
67 Madison Avenue
12th Floor
Memphis, Tennessee 38103
(901) 521-1111

August 20, 1983

ADDENDUM A

42 U.S.C. §2000e-2(h), Section 703(h): Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

42 U.S.C. §2000e-2(j), Section 703(j): Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by an employer, referred or

classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

42 U.S.C. §2000e-5(g), Section 706(g): If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

42 U.S..C. Section 1981: All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. Section 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

ADDENDUM B

FIRE PRIVATES

NAME	SENIORITY DATE	RACE	DISPOSITION
Maury Tennyson	2-1-81	W	Laid off
Harold Poston	1-24-81	W	Laid off
Ken O. Ellis	12-17-80	W	Laid off
Glenn Meadors	12-4-80	W	Laid off
Raymond Ray	9-20-80	W	Laid off
Ernest E. Hulbert	7-17-80	W	Laid off
Charles T. Belk	4-17-80	W	Laid off
Larry Kirby	1-18-80	W	Laid off
Leo Winfrey	11-5-79	B	Laid off
James Winfield	11-5-79	W	Laid off
Dell Ray Travis	11-5-79	W	Laid off
Terry Thaxton	11-5-79	B	Laid off
William Starrett	11-5-79	W	Laid off
John D. Payne	11-5-79	W	Laid off
James F. Morgan	11-5-79	W	Laid off
Harold L. Moore	11-5-79	B	Laid off
Timothy B. Mitchell	11-5-79	W	Laid off
*Cornelius McFadgon	11-5-79	B	Retained in position
Michael Maxwell	11-5-79	W	Laid off
Tommy Mansfield	11-5-79	W	Laid off
Billy L. Mansel	11-5-79	W	Laid off
Javier Lerma	11-5-79	W	Laid off
*Keith O. Jones	11-5-79	B	Retained in position
*Willie Johnson	11-5-79	B	Retained in position
*Amos Hester	11-5-79	B	Retained in position
*Larry Harris	11-5-79	B	Retained in position
Larry Harmon	11-5-79	W	Laid off
*Alonzo Gardner	11-5-79	B	Retained in position
Gary Dennington	11-5-79	W	Laid off
Stanley Darden	11-5-79	W	Laid off

*Denotes minority employee passed over under Court's order.

DRIVERS

NAME	SENIORITY DATE	RACE	DISPOSITION
Roger Peck	9-24-73	W	Bumped to Fire Private
Andrew Patton	9-24-73	B	Bumped to Fire Private
Brian Nance	9-24-73	W	Bumped to Fire Private
*Ronald Moore	9-24-73	B	Retained in position
Donald Kuhn	9-24-73	W	Bumped to Fire Private
*Terrold Bilfrew	9-24-73	B	Retained in position
John Watson	1-2-73	W	Bumped to Fire Private
*Bennie Shields	1-2-73	B	Retained in position
William C. Pleasants	1-2-73	W	Bumped to Fire Private
*Eddie Newsom	1-2-73	B	Retained in position
*Robert Freeman	1-2-73	B	Retained in position
Nelson Boren	1-2-73	W	Bumped to Fire Private
Thomas Seever	12-17-72	W	Bumped to Fire Private
*Elbert Rich	10-30-72	B	Retained in position
Ronald McCarty	10-30-72	W	Bumped to Fire Private
*Joseph Hodges	10-30-72	B	Retained in position
Glenn Hardin	10-30-72	W	Bumped to Fire Private
Gary Hall	10-30-72	W	Bumped to Fire Private
Robert Franks	10-30-72	W	Bumped to Fire Private
Joe Caldwell	10-30-72	W	Bumped to Fire Private
*Jerome Woods	9-5-72	B	Retained in position
*Malcolm Nelson	9-5-72	B	Retained in position
William Murphy	9-5-72	W	Bumped to Fire Private
Enoch McBride	9-5-72	W	Bumped to Fire Private
Marix Hughes	9-5-72	W	Bumped to Fire Private
*Johnny Harrison	9-5-72	B	Retained in position
Joe Wheeler	6-5-72	W	Bumped to Fire Private
Claude Terrell	6-5-72	W	Bumped to Fire Private
Stephen Raney	6-5-72	W	Bumped to Fire Private
James Mills	6-5-72	W	Bumped to Fire Private
Enoch Gentry	6-5-72	W	Bumped to Fire Private
Tony Gallo	6-5-72	W	Bumped to Fire Private
Steve Simmons	6-5-72	W	Bumped to Fire Private

*Denotes minority employee passed over under Court's order.

INSPECTORS

NAME	SENIORITY DATE	RACE	DISPOSITION
Ronald Williams	1-15-76	W	Bumped to Fire Private
Allen Roberts	9-24-73	W	Bumped to Fire Private
William Billings	9-24-73	W	Bumped to Fire Private
Grafton Logan	7-21-73	B	Bumped to Fire Private
Steve Selph	10-30-72	W	Voluntary layoff
Curtis Richmond	10-30-72	B	Bumped to Fire Private
*Raymond McGahee	6-5-72	B	Retained in position
Harold McKinney	6-28-71	W	Bumped to Fire Private
*Fred Jones	11-3-69	B	Retained in position
Gerald Alsup	11-3-69	W	Bumped to Fire Private
Bobby Dennington	8-25-69	W	Bumped to Fire Private
Stanley Arendale	5-1-69	W	Bumped to Fire Private
Phillip T. Hall	3-17-69	W	Bumped to Fire Private

*Denotes minority employee passed over under Court's order.

LIEUTENANTS

NAME	SENIORITY DATE	RACE	DISPOSITION
John Alsobrook	9-30-74	B	Bumped to Fire Private
John Malone	1-2-73	B	Bumped to Fire Private
*Percy Alexander	1-2-73	B	Retained in position
*Ricky Tate	10-30-72	B	Retained in position
*William Kegler	10-30-72	B	Retained in position
Charles Smith	6-5-72	W	Bumped to Fire Private
*Quincy McKay	6-5-72	B	Retained in position
*Raymond Lewis	6-5-72	B	Retained in position
*Dewey Harris	6-5-72	B	Retained in position
*Robert Downey	6-5-72	B	Retained in position
*Gus Bailey	6-5-72	B	Retained in position
*Chester Anderson	6-5-72	B	Retained in position
*Jesse Jones	6-28-71	B	Retained in position
*Ray Cobb	10-23-70	B	Retained in position
Herman Vaughn	11-3-69	W	Bumped to Fire Private
*Archie Scruggs	11-3-69	B	Retained in position
*Don Hulbert	11-3-69	B	Retained in position
*Nathaniel Partee	8-25-69	B	Retained in position
Jimmie Hartsfield	8-25-69	W	Bumped to Fire Private
*Herbert Redden	5-1-69	B	Retained in position
W. Patterson	5-1-69	W	Bumped to Fire Private
Jerry Burnett	5-1-69	W	Bumped to Driver
John Looney	3-17-69	W	Bumped to Driver
*Willie Flowers	3-17-69	B	Retained in position
Robert Burns	11-29-68	W	Voluntary retirement
Jerry Sides	10-1-68	W	Bumped to Driver
James Patterson	10-1-68	W	Bumped to Fire Private
Jack Pannell	10-1-68	W	Bumped to Fire Private
*Leon Bowen	10-1-68	B	Retained in position
Donald Wolfe	7-16-68	W	Bumped to Driver

*Denotes minority employee passed over under Court's order.

FIRE PREVENTION SUPERVISORS

NAME	SENIORITY DATE	RACE	DISPOSITION
James A. Bacon	6-12-74	W	Voluntary retirement
*Clarence E. Howard	5-1-69	B	Retained in position
Jack G. Bacon	3-17-69	W	Bumped to Inspector

*Denotes minority employee passed over under Court's order.

FIRE ALARM OPERATOR I

NAME	SENIORITY DATE	RACE	DISPOSITION
Denise Mathews	12-8-80	B	Voluntary resignation
David P. Currie	12-8-80	W	Laid off